

# DOCKET SECTION

BEFORE THE  
POSTAL RATE COMMISSION RECEIVED  
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U.S. DEPARTMENT OF JUSTICE  
FEDERAL BUREAU OF INVESTIGATION

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POSTAL RATE AND FEE CHANGES, 1997  
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) DOCKET NO. R97-1  
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## INITIAL BRIEF

OF

LABONE, INC.

OSBORN LABORATORIES, INC.

CLINICAL REFERENCE LABORATORY, INC.

RESPECTFULLY SUBMITTED,

R. DENNIS WRIGHT  
HILLIX, BREWER, HOFFHAUS, WHITTAKER  
& WRIGHT, L.L.C.  
2420 Pershing Road, Ste. 400  
Kansas City, MO 64108  
Telephone: 816-221-0355  
Fax: 816-421-2896

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## TABLE OF CONTENTS

I.	INTRODUCTION .....	1
II.	WITNESS CURRIE'S TESTIMONY IS CONCLUSORY AND DOES NOT PROVIDE A COST JUSTIFICATION TO IMPOSE THE SURCHARGE .....	2
III.	THE PROPOSED SURCHARGE WOULD HAVE AN ADVERSE IMPACT ON LABONE, INC. ....	6
IV.	ELIMINATING THE PROPOSED SURCHARGE WILL NOT IMPACT THE POSTAL RATE'S PROPOSED FIRST CLASS RATES .....	7
V.	CONCLUSION .....	7

## I. INTRODUCTION

LabOne, Inc., Osborn Laboratories, Inc., and Clinical Reference Laboratory, Inc. (“LabOne, et al.”) herewith submits their Initial Brief in opposition to the United States Postal Service’s (“USPS”) proposed surcharge on Hazardous Medical Materials (“HMM”). LabOne, et al. has submitted evidence that the USPS’s proposed 50 cent per piece surcharge on HMM is not supported by any direct cost evidence whatsoever, is unnecessary and would adversely affect the interests of LabOne, et al.

II. WITNESS CURRIE'S TESTIMONY IS CONCLUSORY AND DOES NOT PROVIDE A COST JUSTIFICATION TO IMPOSE THE SURCHARGE

The USPS offered but one witness in support of its requested surcharge. USPS's witness John V. Currie (USPS-T-42) proposes a 50 cent per piece surcharge for HMM that would apply to six categories of material currently described as:

- (a) etiologic agents,
- (b) etiological agent preparations,
- (c) clinical (or diagnostic) specimens;
- (d) biological products,
- (e) sharps, and
- (f) other medical devices

(Currie, p. 5).

Witness Currie opines that the surcharge is necessary to:

1. recognize the special cost of handling the materials;
2. improve the alignment of prices with costs;
3. increase the conformity of the Postal Service price structure with industry standards;
4. provide a means of improving postal service data on the materials.

(Currie, p. 1).

In past Postal Rate Commission decisions in R78-1 through R90-1, proposed surcharges have been based on USPS cost studies and were "restricted to the additional costs shown."<sup>1</sup>

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<sup>1</sup> Docket R87-1, Opinion and Recommended Decision, Vol. 1, pp. 450-451.

Witness Currie admits in his testimony that he does not know the amount of extra cost, if any, which may be incurred by the USPS to handle HMM and does not know the volume of mail that will be impacted by the proposed surcharge (Currie, pp. 15-17). Witness Currie admits that the USPS has not done a cost study: “Although the Postal Service has not been able to quantify these costs, it is my judgment that they are in the same order of magnitude as the proposed surcharges.” (Currie, p. 15) (emphasis added). Because this crucial information is lacking, there can be no justification for the surcharge.<sup>2</sup> The cost of handling HMM and the volumes impacted must be known before any “additional costs” can be evaluated to determine whether the proposed surcharge is justified.

Witness Currie further admits that additional handling is not applicable to LabOne, et al.’s clinical specimens because that material is not treated as “outside pieces” (Currie, p. 9).<sup>3</sup> LabOne, et al. agrees with Mr. Currie on this point and testified that the USPS places the clinical specimens in sacks for dispatch. (Tr. 30/16355).

Witness Currie, not having any direct cost information related to the handling and transportation of clinical specimens, attempts to justify the surcharge by citing purported fees charged by private carriers of “hazardous materials” (not clinical specimens). (Currie, pp. 12-14). In contrast to Mr. Currie’s assumptions, LabOne, et al.’s witnesses provided evidence that other carriers do not charge any surcharge at all for clinical specimens. Mr. Currie testified that Airborne Express imposes a hazardous material surcharge of \$12.00 per shipment

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<sup>2</sup> Furthermore, as pointed by LabOne, et al.’s witness Crowley, Mr. Currie does not have the weight or elasticity data to calculate the anticipated revenue generated by the surcharge (Tr. 30/16298-16299).

<sup>3</sup> LabOne, et al.’s HMM is limited to clinical specimens only (Tr. 30/16338, 16364 and 16380).

and requires the materials be placed in a lab pack for 75 cents a piece. (Currie, p. 13).

However, witness Bourk testified that Osborn utilizes Airborne to bring in thousands of packages per day and that “Airborne does not charge us a hazardous material charge or a lab pack fee. Prior to our use of Airborne, we contracted with FedEx to bring packages to us. FedEx did not impose a hazardous material charge or a lab pack fee.” (Tr. 30/16341).

Witness Rastok of LabOne also testified that neither Airborne or FedEx places any additional surcharge on the clinical specimen packages (Tr. 30/16366). Likewise, witness Schmutzler of Clinical Reference Laboratory testified that private carriers do not charge extra for a hazardous material charge or for the lab pack (Tr. 30/16381).

Witness Currie suggests that the surcharge is a way to provide a means of improving postal service data on HMM (Currie, p. 1). The suggestion to have LabOne, et al. pay a surcharge so that the USPS may derive data on clinical specimens is unwarranted and unsupportable. If the USPS were truly interested in obtaining data on the movement of clinical specimens, that information could be obtained from the laboratories themselves or, as witness Crowley suggested, the USPS could implement a discount and obtain the same data (Tr. 30/16332).

Witness Currie, without the benefit of cost information, attempts to use safety issues as a justification for the surcharge. Witness Currie speaks in vague terms of such things as “awareness level” training for USPS employees who frequently handle packages that may contain hazardous materials (Currie, p. 11).<sup>4</sup> Mr. Currie does admit that Postal Service

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<sup>4</sup> At this portion of his testimony, Mr. Currie does not attempt to distinguish between other hazardous materials and clinical specimens, the only HMM at issue with respect to LabOne, et al.

training costs are generally not “attributed” to individual mail subclasses and special services, but are accounted for as institutional costs. Id. Here, Mr. Currie, in essence, admits that there is no way to quantify any such training costs for clinical specimens. Indeed, there is no evidence that safety is a real issue or that any training is necessary. LabOne, et al.’s evidence shows that for approximately 9 years, none of the laboratories have experienced any leakage problems with clinical specimen kits. Mr. Bourk of Osborn Laboratories testified that there is no evidence of leakage. Osborn’s local post office maintains a leaker log to track leaking packages and Mr. Bourk has never been advised by the USPS representatives of leaking package problems. (Tr. 30/16340-16341). Mr. Bourk was asked the following question by Chairman Gleiman:

And it quotes a Postal Service spokesperson, Mark Saunders, and Mr. Saunders says that he knew of no infectious materials leakign [sic] from packages for more than 10 years. Is that consistent with your experience at Osborn?

THE WITNESS: Yes.

(Tr. 30/16354).

Mr. Rastok of LabOne testified that in over 9½ years with LabOne, he never had experienced a leak in transport due to packaging. (Tr. 30/16372-16373).

Witness Currie attempted to show that the surcharge was warranted based on a study of “Accident Reports” submitted in Library Reference PCR-26 (Currie, pp. 9-10). As shown by LabOne, et al.’s witness Crowley, this study does not support the surcharge because: 1) the study is outdated, 2) the clean-up costs are not identified, 3) the hazardous materials involved in the accidents are not identified as HMM; and, 4) the proposed surcharge would add

approximately \$850,000 to LabOne, et al.'s postal bill although the accidents in the study are not related to LabOne, et al.'s mail (Tr. 30/16300-16301).

Based upon LabOne, et al.'s un rebutted testimony, it is somewhat disingenuous for Mr. Currie to bootstrap arguments for a surcharge on safety concerns which the historical record has shown to be unwarranted. Such statements by Mr. Currie that "HMM pieces appear to have higher processing costs because employees are understandably more cautious in handling them" (Currie, p. 8) is conclusory at best and is not applicable to LabOne, et al.'s clinical specimen mail which, Mr. Currie admits, does not require special handling (Currie, pp. 8-9). Witness Currie's assumptions and feelings are not valid substitutes for concrete cost justifications for the proposed surcharge.<sup>5</sup>

### III. THE PROPOSED SURCHARGE WOULD HAVE AN ADVERSE IMPACT ON LABONE, ET AL.

LabOne, et al.'s evidence has shown that if the surcharge for HMM were approved, there would be a significant impact on the postal charges incurred by the laboratories. The evidence shows that LabOne, et al. mailed approximately 1.7 Million pieces in 1997 at an average rate of 57 cents per piece (Tr. 30/16291). If the 50 cent per piece surcharge were to be applied to the average rate, the postal rate will increase by 87% to \$1.07 per piece. Id. This increase is extraordinary when one considers that a surcharge is defined as a "charge above the usual or customary charge."<sup>6</sup> The USPS has not offered any evidence to support or show why its customary charges do not currently meet all of its costs for handling LabOne, et

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<sup>5</sup> It is interesting to note that LabOne, et al.'s evidence stands unchallenged as the USPS chose not to submit any rebuttal testimony from witness Currie.

<sup>6</sup> Transportation Logistics Dictionary, The Traffic Service Corporation, 1982.



al.'s HMM. Failing to show the existence of unrecovered costs, the proposed 50 cent surcharge should be rejected.

IV. ELIMINATING THE PROPOSED SURCHARGE  
WILL NOT IMPACT THE POSTAL SERVICE'S  
PROPOSED FIRST CLASS RATES

The elimination of the proposed surcharge will not have an adverse impact on the Postal Services rate structure. As shown by LabOne, et al., the reduction in First Class revenues associated with the surcharge would equal \$0.0005 per piece (Tr. 30/16302). This reduction, therefore, would not require modifications to the Postal Service's proposed rate design.

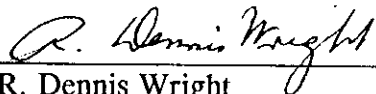
V. CONCLUSION

For all the above reasons, LabOne, et al. requests and believes that the Commission should recommend that no surcharge should be applied to HMM as requested by the USPS.

CERTIFICATE OF SERVICE

I hereby certify that I have this date served the foregoing document upon all participants of record in this proceeding in accordance with Section 12 of the Rules of Practice.

Date: April 1, 1998

  
R. Dennis Wright